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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,531	10/23/2000	Thomas T. Yamashita	YAMA-008	3483

7590

01/31/2002

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant N .

09/695,531

Applicant(s)

YAMASHITA, THOMAS T.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

*pmP*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Acknowledgement is made of Applicant's IDS entered 23 October 2000.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10-13, 14, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinbergen (WO 97/31879).

As to Claim 1, Reinbergen discloses a composition comprising a plurality of distinct microbial species (see abstract) wherein each constituent member is antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para).

As to Claim 2, Reinbergen further discloses one bacterial and one fungal species (page 5 middle para.).

As to Claims 3 and 4, Reinbergen further discloses at least 5 distinct microbial species or 5 distinct bacteria species (page 5 middle para., page 9 lines 19-30).

As to Claim 5, Reinbergen further discloses 2 distinct fungal species (page 5 middle para.).

As to Claims 6-8, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

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As to Claim 10, Reinbergen discloses a composition comprising a plurality of at least 5 distinct bacterial species and at least 2 distinct fungal species (page 5 middle para.) wherein each constituent member is antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para).

As to Claims 11 and 12, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

As to Claim 13, Reinbergen further discloses applying the composition of Claim 1 to the soil (abstract and page 11 example 1).

As to Claim 14, Reinbergen discloses a method of producing a composition of Claim 1, comprising identifying a plurality of microbial species that are antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para); and combining the plurality (page 5 lines 19-21).

As to Claims 17-19, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinbergen (WO 97/31879).

As to Claim 15, the limitations of Claim 14 are disclosed above. Not disclosed is growing the species separately before combining. Examiner takes official notice that it old and notoriously well known in the microbiological art to grow microbial species separately. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Reinbergen by growing the species separately so as to maintain pure species lines to ensure quality of the final product.

As to Claim 20, the limitations of Claim 14 are disclosed as described above. Not disclosed are the species assayed to determine their (i)-(v) characteristics. Examiner takes official notice that it old and notoriously well known in the microbiological art to grow determine traits of a microbial species before adding it to a composition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Reinbergen by assaying the species to determine their (i)-(v) characteristics so as to ensure the composition works.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinbergen (WO 97/31879) in view of Kosanke et al. (US 5,695,41).

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed are the microbial species grown on a complex substrate. Kosanke et al. discloses growing

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microbes on complex substrates (col. 4 lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the composition of Reinbergen by using a complex substrate to grow the microbes as disclosed by Kosanke et al. so as to efficiently grow the organisms.

As to Claim 16, the limitations of Claim 15 are disclosed as described above. Not disclosed are the microbial species grown on a complex substrate. Kosanke et al. discloses growing microbes on complex substrates (col. 4 lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Reinbergen as modified by using a complex substrate to grow the microbes as disclosed by Kosanke et al. so as to efficiently grow the organisms.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Drahos et al., Levy, Hoitink, Krupicka, Bernier et al., Rambier, and Pollak disclose in the prior art various microbial compositions that are applied to the soil.

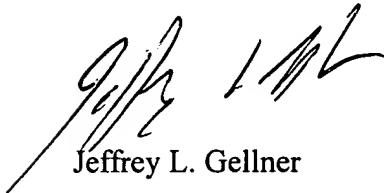
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the

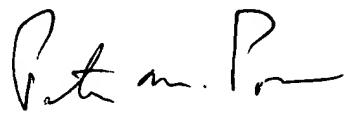
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Technology Center where this application or proceeding is assigned are 703.305.7687,  
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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